

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ANTHONY STEVENSON,

Plaintiff,

File No. 2:08-CV-154

v.

HON. ROBERT HOLMES BELL

WAYNE GAMELIN,

Defendant.

**ORDER APPROVING AND ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On February 1, 2010, United States Magistrate Judge Timothy P. Greeley issued a report and recommendation ("R&R") recommending that Defendant Wayne Gamelin's motion for summary judgment be granted and that this case be dismissed in its entirety. (Dkt. No. 23, Mot. for Summ. J; Dkt. No. 36, R&R.) Plaintiff Anthony Stevenson, appearing through counsel, filed objections to the R&R on February 14, 2010. (Dkt. No. 37.)

This Court is required to make a de novo determination of those portions of the R&R to which specific objection has been made, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Plaintiff objects to the Magistrate Judge's determination that Defendant's conduct amounted to no more than negligence. Plaintiff contends that the facts presented in his affidavit are sufficient to create an issue of material fact for trial as to whether Defendant's

conduct in the processing and mailing of his appellate documents was intentional and reckless rather than negligent.

Upon de novo review the Court agrees with the Magistrate Judge that even assuming Plaintiff told Defendant about the deadline, Plaintiff has not presented evidence that Defendant's failure to process the mail was intentional or deliberate.

Plaintiff also objects to the Magistrate Judge's determination that there was no actual injury. The Court agrees with the Magistrate Judge that because the Michigan Court of Appeals had already denied Plaintiff's delayed application for leave to appeal for lack of merit, the delay in the filing of Plaintiff's subsequent appeal to the Michigan Supreme Court does not constitute actual injury. Accordingly,

IT IS HEREBY ORDERED that Plaintiff's objections to the R&R (Dkt. No. 37) are **OVERRULED**.

IT IS FURTHER ORDERED the February 1, 2010, R&R (Dkt. No. 36) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendant's motion for summary judgment (Dkt. No. 23) is **GRANTED**.

IT IS FURTHER CERTIFIED pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3) that an appeal of this action would not be in good faith.

Date: March 12, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE